REMARKS

Claims 1 to 69 are pending in the present application, of which Claims 1, 30, 46, 47 and 59 are the independent claims, and are hereby amended. No new matter has been added. Reconsideration and reexamination are respectfully requested.

Applicant's undersigned representative wishes to thank Examiner Sheleheda for the courtesies extended during the personal interview conducted on March 25, 2009. This paper is pursuant the subject matter discussed during the interview and in view of the Office Action dated December 22, 2008. As discussed during the interview, the claims have been amended to include the discussed subject matter into the claims. Support for the amended claimed subject matter can be found in the Specification, at least in paragraph 0021 and Figures 2 and 4, which was agreed upon by the Examiner during the interview, as was the filing of this Supplemental Amendment.

In the Office Action dated December 22, 2008, the claims are rejected under 35 U.S.C. § 103(a): Claims 1, 4 to 7, 10, 12, 13, 20 to 22, 26, 27, 30, 33, 34, 36, 38 to 48, 54 to 59, 62 and 65 to 69 are rejected over U.S. Patent No. 6,704,930 (Eldering '930) and U.S. Patent No. 6,564,380 (Murphy), Claims 11, 14 to 18, 28, 35, 37, 49 to 51 and 64 are rejected over Eldering '930, Murphy and U.S. Publication No. 2002/0026638 (Eldering '638), Claims 2, 3, 24, 25, 29, 31, 32, 60 and 61 are rejected over Eldering '930, Murphy and U.S. Patent No. 5,872,588 (Aras), Claims 52 and 53 are rejected over Eldering '930, Murphy, Eldering '638 and Aras, Claim 23 is rejected over Eldering '930, Murphy, and U.S. Patent No. 5,424,770 (Schmeizer), Claims 8 and 9 are rejected over Eldering '930, Murphy and U.S. Patent No. 6,169,542 (Hooks), Claim 63 is rejected over Eldering '930, Murphy and U.S. Patent No. 6,154,206 (Ludtke), and Claim 19 is rejected over Eldering '930, Murphy, Eldering '638 and U.S. Patent No. 6,385,192 (Kozdon). Reconsideration and withdrawal of the remaining claim rejections are respectfully requested based at least on the following reasons.

By way of a non-limiting example and in accordance with one or more embodiments, reference is respectfully made to Figure 1 and paragraphs 19 and 20 of the publication of the present application, i.e., U.S. Publ. No. 2003/0056213 (hereinafter referred to as "the published application"), wherein a flow control system 10 is in communication with input sources 12, 14

and 16 as part of a system, which includes a streaming media server 104, a web server 106 and multiple end user processors 102. In accordance with at least one embodiment and by way of a non-limiting example, streaming media server 104 serves the encoded composite information stream for playback by a media player at one or more end user processors 102. By way of a further non-limiting example, in accordance with at least one embodiment, reference is made to Figure 2 of the published application, wherein flow control system 10 acts as an intermediary between an encoder 26, e.g., a media encoder, and a media delivery device 24, which includes a capture portion to receive data from a number of input sources, e.g., sources 12, 14 and 16. By way of yet another non-limiting example, reference is made to Figure 4, wherein flow control system 10 includes media capture 24 and media driver 34 components in accordance with at least one embodiment. In accordance with one or more embodiments, flow driver 20 of the flow control system 20 selectively passes data received from multiple ones of the input sources, e.g., sources 12, 14 and/or 16, as a composite information stream directly to encoder 26, which encodes the composite information stream as an encoded composite information stream for playback by the media player at an end user processor 102. By way of a further non-limiting example and in accordance with one or more embodiments disclosed in the present application, reference is made to the paragraph 24 found at page 2 of the published application, which describes (in part):

> [F]low control system 10 continues to pass data from the media delivery
> device until it receives a signal that data from an alternate source should
> be inserted. When such a signal is received, flow control system 10
> selects the designated alternate source as indicated in block 216, and
> passes data from the selected source to encoder 26. The data from this
> alternate source will be inserted into the data stream until the entire file
> has been delivered to encoder 26. Once the file has been inserted into the
> stream, flow control system 10 returns to block 214 to determine whether
> another alternate source should be selected to transmit another file. If so,
> the next alternate source is selected and the data is passed from the
> selected source to encoder 26. This continues until it is determined (i.e. at
> block 214) that no files from other sources are to be passed to encoder 26.
> Flow control system 10 then returns to media delivery device 24 and

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continues to pass data from media driver 36 to encoder 26.

In accordance with one or more embodiments, the flow of unencoded data that has not yet been encoded for streaming from multiple sources is controlled so as to directly pass the controlled flow as a composite information stream of unencoded data from the flow control system to a media encoder for encoding into an encoded composite information stream for a media player.

Claim 1 recites a system comprising a media delivery device, a flow control system and a media encoder. The media delivery device has a media device driver associated therewith. The flow control system, which is independent of and communicating with the media delivery device and with a stored data source, is configured to receive unencoded data that has not yet been encoded for streaming from the media delivery device and from the stored data source, and to control the flow, so as to directly pass a controlled flow of data as a composite information stream of unencoded data from the flow control system to the media encoder for encoding into an encoded composite information stream. The encoded composite information stream is made available for delivery over the internet to a media player.

It is conceded in the Office Action that Eldering '930 fails to teach, suggest or disclose a media encoder for encoding the stream for a media player for delivery over the Internet. The Applicant respectfully submits that Eldering '930 fails to teach, suggest or disclose multiple other ones of the claim elements, including a flow control system, which receives unencoded data from a media delivery device and a stored data source, and controls the flow, so as to directly pass a controlled flow of data as a composite information stream of unencoded data from the flow control system to a media encoder for encoding into an encoded composite information stream.

In response to the Applicant's previous remarks, the Examiner states (at page 2 of the Office Action):

> "Eldering explicitly describes a system wherein the media signal (program stream) is halted (interrupted) to instead send an advertisement (see Figures 2-5 and column 4, lines 31-38, lines 53-63, column 5, lines 1-9 and lines 10-19). Eldering describes four separate methods of inserting the advertisements into the programs, dependent upon bit rate and bandwidth needs, all of which meet the current claim limitations. As can plainly be seen

in the associated figures (2-5), and explicitly stated by Eldering (column 4, lines 31-38

and 53-63) the program streams are interrupted and the bandwidth is then used to instead

transmit advertisements which have been inserted into the program streams. This action

clearly meets the claim limitations of 'flow control', as the flow of the media program is

halted to allow transmission of the associated ad. The resulting output stream comprises a

'composite' stream as it is made up of both the original program and the newly inserted

ads."

Eldering '930 describes a cable or satellite TV system (not a streaming media system),[1]

which uses a multiplexer to dynamically allocate bandwidth so that discrete cable program and

ad streams (see col. 3, lines 61 to 65 of Eldering '930) can share the same transport channel over

the cable or satellite network. In contrast to the "composite stream" and the "flow control" that

the Examiner considers to be disclosed by Eldering '930, Claim 1 recites a composite

information stream of unencoded data that is encoded into an encoded composite information

stream, and further recites controlling the flow of unencoded data received from multiple

sources, e.g., a media delivery device and a stored data source, so as to directly pass a composite

information stream of unencoded data to a media encoder for encoding the composite

information stream of unencoded data into an encoded composite information stream. According

to Eldering '930, a program stream and an advertisement stream are discrete pieces of data, each

of which is received separately and each has its own bit rate and bandwidth. According to

Eldering '930, an Ad Insertion System (AIS) 201 receives an advertisement, i.e., advertisement

213 from an ad source 211 or compressed ad 233 from ad storage 231, and receives a program

stream from a program stream source 203. The AIS sends the separately-received program

stream and advertisement as separate and discrete pieces of data, i.e., program stream 239 and ad

237, to a multiplexer (see col. 9, lines 44 to 52 and Figure 11 of Eldering '930). The multiplexer

multiplexes a channel identified by insertion instructions 241 received from AIS 201 so that the

separately-received advertisement and program streams can be transported over the same channel

to the subscriber based on the information provided by the AIS. The manner in which the

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1 While Eldering '930 at col. 7 ll. 44-47 reads that in an "internet-based environment" the ads may be inserted into
the "streaming video streams", there is no description or teaching of any kind of how this might take place, and in
any event the statement clearly indicates that the ads are inserted into "streaming video streams", which in an internet
environment exists after encoding, in stark contrast to the operation of the invention as presently claimed.

multiplexer multiplexes the channel to transport the advertisement on the same channel used for the program stream depends on whether or not the advertisement has the same bit rate and bandwidth requirements as the program stream. If the advertisement's bit rate and bandwidth requirements do not match that of the program stream, the multiplexer must adjust the channel's bandwidth to accommodate the advertisement (see col. 4, lines 43 to 45 and 63 to 67, and Figure 6 of Eldering '930). According to Eldering '930, the multiplexer receives the program stream 239 and the advertisement, i.e., ad 237 separately from the AIS as discrete pieces of data, receives insertion instructions 241 for multiplexing the channel to transport the program stream and ad over the channel, and merely multiplexes the channel to transport the two discrete and separately-received program and ad streams. Since the bit rate and bandwidth for each of the program stream and the advertisement are set when the program stream and advertisement are received as separate and discrete pieces of data by the multiplexer, the program stream and advertisement must have been encoded prior to receipt by the multiplexer. The AIS therefore does not directly pass a composite information stream of unencoded data to the multiplexer, but rather passes two discrete pieces of encoded data, i.e., program stream 239 and ad 237, to the multiplexer. The multiplexer therefore does not receive unencoded data, does not receive a composite information stream of unencoded data, does not encode data, and does encode a composite information stream of unencoded data, but simply multiplexes an available channel in order to transport the separate and discrete pieces of data that it receives from the AIS using available channel bit rate capacity to accommodate the separate bit rate and bandwidth needs of the separate and discrete pieces that it receives from the AIS. Furthermore, it should be clear that the resultant multiplexed signal is for transport over the one channel only, and that the multiplexed signal must be demultiplexed at the subscriber end in accordance with the multiplexing scheme utilized.

In stark contrast to the system of Eldering '930, the invention of the present claim receives unencoded data from multiple sources, and a flow control system directly passes the unencoded data from multiple sources as an unencoded composite information stream to a media encoder for encoding into a composite information stream encoded in a streaming media format for a media player. The flow control system can directly pass an unencoded composite information stream by either halting the flow of an unencoded media signal received from one source to the encoder,

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so as to instead send, for example, unencoded data (e.g. an ad) from an alternate data source to the encoder, or can send the alternate stored source data and the media signal simultaneously to the encoder (e.g. a watermark) as unencoded data, which encoder in turn creates an encoded composite information stream, or streaming media, for the media player. The encoded composite information stream is then made available for delivery over the internet to the media player. As is known in the art, an encoder can encode data into a media stream of various formats and bit rates, but in the invention of the subject claim the alternate stored data is alternated or combined into a composite information stream before encoding, thus no multiplexing or demultiplexing of the composite data stream coming from the encoder to be sent to media player is required, but rather the encoded stream can be sent over the internet in known ways as streaming media to be received and played by a media player.

Eldering '930, it is respectfully submitted, contains no teaching or suggestion of a flow control system for controlling a flow of unencoded data from more than one source so as to directly pass a composite information stream of unencoded data received from multiple sources by the flow control system to a media encoder for encoding the unencoded composite information stream into an encoded composite information stream that is to be made available for delivery over the internet to a media player as claimed. Eldering '930 fails to teach, suggest or disclose multiple elements of Claim 1, and therefore cannot properly be used as grounds for a § 102 rejection. Furthermore, and since Eldering '930 fails to teach, suggest or disclose multiple elements of Claim 1, it likewise cannot provide the basis of a proper § 103(a) rejection. Claim 1 is therefore considered to be patentable over Eldering '930. In addition, independent Claims 30, 46, 47 and 59, and the claims that depend from each of the independent claims, are also considered to be patentable over Eldering '930 for at least the same reasons.

Murphy does not remedy the deficiencies noted above with respect to Eldering '930. Murphy describes a system of point-of-presence (POP) servers, each of which can receive an encoded video program from a local video source, which has an encoder that encodes the video program, and can provide the encoded video program to a subscriber authorized by the system's master authorization server. While the local video source's video program is encoded before it is transmitted to the POP server, it is nothing more than an encoded video program from a single local video source, and therefore is not the same as the claimed encoded composite information

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stream, which is generated by encoding a composite information stream directly passed to the encoder by controlling the flow of data from multiple sources. Furthermore, Murphy also fails to teach, suggest or disclose the claimed flow control system, which is configured to receive unencoded data from a media delivery device and a stored data source and to control the flow of the media delivery device data and the stored data source data so as to directly pass the composite information stream of unencoded data to a media encoder for encoding into the claimed encoded composite information stream.

Like Eldering '930, Murphy, it is respectfully submitted, contains no teaching or suggestion of a flow control system, which is separate from a media delivery device, for controlling a flow of unencoded data so as to directly pass a composite information stream of unencoded data to a media encoder for encoding the composite information stream of unencoded data into an encoded composite information stream that is to be made available for delivery over the internet to a media player as claimed. Since Murphy fails to teach, suggest or disclose multiple elements of Claim 1, it cannot properly be used as grounds for a § 102 rejection or a § 103(a) rejection. Since Eldering '930 and Murphy are each missing multiple ones of the same elements, no combination of Eldering '930 and Murphy can teach, suggest or disclose all of the claim elements and cannot therefore provide grounds for a proper § 103(a) rejection. Claim 1 is therefore considered to be patentable over Eldering '930 and Murphy. In addition, independent Claims 30, 46, 47 and 59, and the claims that depend from each of the independent claims, are also considered to be patentable over Eldering '930 and Murphy for at least the same reasons.

The remaining art, i.e., Eldering '638, Aras, Weatherford, Schmeizer, Hooks, Ludtke and Kozdon, and the grounds for which the remaining art is applied is not considered to remedy the above-noted deficiencies in Eldering '930 and Murphy, so any such combination also fails to reach all of the claimed elements of the presently pending claims.

In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.
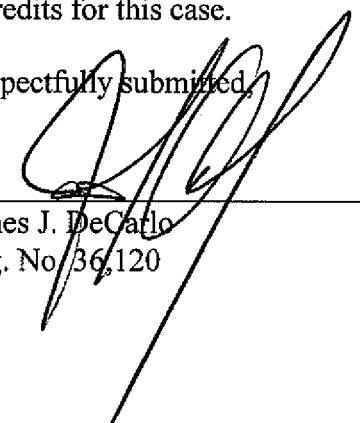
Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the

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Examiner's earliest convenience.

The Applicant's attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,

Date: April 1, 2009

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